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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/710,571

07/21/2004

Arthur J. Lewis

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EXAMINER

VANORE, DAVID A

ART UNIT

PAPER NUMBER

2881

MAIL DATE

DELIVERY MODE

12/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/710,571

Applicant(s)

LEWIS, ARTHUR J.

Examiner

David A. Vanore

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed October 18, 2007 have been fully considered but they are not persuasive.
2. Applicant's arguments have been read and considered.
3. The remarks made by Applicant in reply are unsupported by evidence and do not overcome the issues raised by the examiner regarding the asserted utility of the invention purported in the instant application.
4. The rejection of claims 1-10 and 13 is maintained.

Information Disclosure Statement

5. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1-10 and 13 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a credible asserted utility or a well established utility.

8. The instantly claimed invention is purported to have utility as a source for x-rays. The anode and cathode are recessed within tube (80) and have surfaces parallel to one another and perpendicular to a flight path down the tube to an exit. Therefore, while it is known in the art that an arc discharge contemplated by the instant invention will produce x-ray electromagnetic radiation, the electrons striking the anode in the instant invention will produce x-ray which will scatter into the tube and not be able to exit the apparatus. Hence, in conventional x-ray generating devices utilizing arc discharge, the surface of the anode is facing, at least in part, the direction of propagation of the desired x-ray beam. Since the device cannot cause x-ray radiation to exit the aperture of the tube based on the geometry of the anode and cathode, no such x-rays may be produced from the device.

9. The instantly claimed invention is further purported to be capable of both targeting a cancer cell in the body for destruction without harming surrounding tissue and also of destroying a celestial body. On the first purported utility claim, pages 15-19 of the specification which detail the construction and operation of the apparatus do not supply a reasonable explanation as to how radiation capable of destroying a malignant cell in a living organism may be introduced without coming into contact with healthy cells. Such is one of the chief problems of radiological therapies and medical physics as radiation must pass through healthy tissue to contact an internal diseased tissue or cell.

10. Similarly, there is no support for the assertion that the device is capable of outputting the energy required to turn a celestial body incident of earth "to powder" as

purported in the specification. Any such application of energy would first have to pass through the device itself before being transferred to a target, thus if such energy is sufficient to atomize a distant asteroid or meteor, as contemplated, the device itself would be required to withstand an even greater amount of energy applied thereto as electromagnetic radiation dissipates as the inverse of the distance squared. How further would the device deal with recoil? Such a massive outpouring or electromagnetic radiation even in a short period of time, would produce massive amounts of recoil on the device. In either case, no one of skill in the art would expect that the device claimed could produce such an effect.

11. The current device is also purported as being capable of nuclear fusion with only water. This claim is not credible on its face.

12. Taken together, it is apparent that the purported utility of the instant invention is not credible. Further attention is drawn to the "self generated magnetic bottle" effect discussed in the invention. Any magnetic field produced via induction or by a moving charge still cannot shape or contain electromagnetic radiation. EM radiation is light, consisting of photons, which are not deflected by a magnetic field. Therefore, the entire principle of operation described by the device to contain and emit a desired wavelength of electromagnetic radiation is not operable and claims of function and utility similarly not credible.

Claim Rejections - 35 USC § 112

13. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

14. Claims 1-10 and 13 are also rejected under 35 U.S.C. 112, first paragraph.

Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention.

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

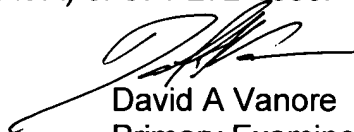
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Vanore whose telephone number is (571) 272-2483. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on (571) 272-2293. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David A Vanore
Primary Examiner
Art Unit 2881

dav